

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN McFADYEN, et al.,

Plaintiffs,

vs.

CIVIL ACTION NUMBER

1:07-CV-00953

DUKE UNIVERSITY, et al.,

Defendants.

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EDWARD CARRINGTON, et al.,

Plaintiffs,

vs.

CIVIL ACTION NUMBER

1:08-CV-00119

DUKE UNIVERSITY, et al.,

Defendants.

BEFORE: THE HONORABLE JUDGE DIXON

TRANSCRIPT OF HEARING ON MOTION TO CONSOLIDATE
TRANSCRIBED FROM AN OPEN-MICROPHONE RECORDING

At Durham, North Carolina
August 31, 2011 - 9:05 a.m.

Transcribed by:
Edie B. Chiavatti

1 THE COURT: And if names crop up during
2 discovery as discovery goes forward, then you'll add that
3 -- those names to that list, correct?

4 MS. WELLS: Certainly, Your Honor. And
5 I think that's an important point to deal -- when you
6 start with the 18. For example, we would identify the
7 police officers that we believe have relevant information
8 on that. If their e-mails and their documents show the
9 involvement of other people or if during a deposition
10 it's determined that somebody else played a key role,
11 certainly their data would not have been destroyed. It
12 can be processed and searched at that point.

13 THE COURT: What's wrong with that?

14 MR. THOMPSON: Your Honor, I believe if
15 we are allowed to get the e-mails of everyone we're
16 deposing -- let's say of 60 individuals -- and then we
17 can add incrementally in discovery as we find additional
18 people, we could live with that, Your Honor.

19 MS. WELL: Your Honor --

20 THE COURT: Go ahead.

21 MS. WELLS: -- getting into the weeds a
22 little bit, and I may need to turn over the floor to Mr.
23 Falcone. He works with us. He's much more knowledgeable
24 on the ESI issues. But the estimates that we have gotten
25 from our vendors for -- and that we have made ourselves

1 for preserving and processing the data for the 18 that we
2 have identified, which is almost a terabyte of data, the
3 costs just for processing and storing that information
4 for one year -- and this litigation has already been
5 going on for many more years than that. The cost ranges
6 between \$762,000 and \$1.5 million just for processing and
7 storing that. And the costs of reviewing that go into
8 more millions. Your Honor, that is incredibly burdensome
9 and --

10 THE COURT: And I would agree and don't
11 -- don't the cases say, however, that you demonstrate
12 that burden, you're relieved of some of this
13 responsibility, or you can pass it off or give him, the
14 other side, the opportunity to do their own work in
15 storing and processing?

16 MS. WELLS: Yes, Your Honor. And if Mr.
17 Thompson would give us those 60 names within a reasonable
18 time, we would be prepared to do that and come to the
19 Court with those specific costs that would be incurred by
20 Duke if we are obliged to do for the 60 that he
21 mentioned.

22 THE COURT: All right.

23 MR. EKSTRAND: Your Honor, we would ask
24 that [inaudible].

25 I want to make a very specific point.